

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2013

Diane M. Fremgen
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP279

Cir. Ct. No. 2011CV2469

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RODERICK FLOWERS,

PLAINTIFF-APPELLANT,

V.

CITY OF MADISON, WISCONSIN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
JUAN B. COLAS, Judge. *Affirmed.*

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

¶1 PER CURIAM. Roderick Flowers appeals an order that dismissed his action for declaratory and injunctive relief from the City of Madison's use of a local ordinance to revoke the alcohol beverage license of a tavern for which Flowers serves as both agent and landlord. We conclude that the circuit court

properly determined that Flowers lacked standing to proceed in an individual capacity, and therefore affirm.

BACKGROUND

¶2 Flowers is the registered agent for The Family Business, LLC doing business as a tavern called R Place on Park, and he is also the owner of the premises upon which the tavern operates. On October 23, 2010, the City of Madison commenced proceedings to revoke The Family Business's Class B Combination Alcoholic Beverage License, pursuant to Madison General Ordinance (MGO) 38.10(1). Flowers filed this *pro se* action in his own name, petitioning for a writ of prohibition to enjoin the revocation proceeding and further seeking a declaratory judgment that MGO 38.10(1)(ar) deprived him of his constitutional due process rights as the property owner.

¶3 The circuit court dismissed the action on summary judgment for lack of standing, and Flowers appeals.

STANDARD OF REVIEW

¶4 This court reviews summary judgment decisions *de novo*, applying the same methodology and legal standard employed by the circuit court. ***Frost v. Whitbeck***, 2001 WI App 289, ¶6, 249 Wis. 2d 206, 638 N.W.2d 325. We first examine the pleadings to determine whether the complaint states a claim and the answer joins an issue of fact or law. ***Id.*** If issue has been joined, we examine the parties' affidavits and other submissions to determine whether the movant has made a *prima facie* case for judgment and, if so, whether there are any material

facts in dispute that would entitle the opposing party to trial. *Id.*; see also WIS. STAT. § 802.08(2) (2011-12).¹

¶5 Summary judgment decisions may also encompass procedural issues, such as standing. “Whether a plaintiff has standing to bring a particular issue before a court is a question of law, which we decide independently of a circuit court’s decision.” *Silver Lake Sanitary Dist. v. DNR*, 2000 WI App 19, ¶6, 232 Wis. 2d 217, 607 N.W.2d 50.

DISCUSSION

¶6 The test for standing has two parts: first, whether the challenged action caused direct injury to the plaintiff’s interest, and second, whether the interest affected was one recognized by law. *Wisconsin’s Env’tl. Decade, Inc. v. PSC*, 69 Wis. 2d 1, 10, 230 N.W.2d 243 (1975).

¶7 Here, Flowers asserts three theories for his claim of standing to challenge the revocation of the tavern’s liquor license through declaratory judgment: (1) that he is the designated liquor agent of the corporation subject to the same statutory requirements as a natural person licensee; (2) that he is a resident of the city; and (3) that he is the property owner of the premises on which the tavern operates.

¶8 Flowers relies primarily upon the following language from *State v. Beaudry*, 123 Wis. 2d 40, 365 N.W.2d 593 (1985), to support his theory that the

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

designated agent of a corporation with a liquor license must have individual standing in all matters pertaining to that license:

The legislative intent in vesting the designated agent with full authority and responsibility for conduct of the business was to treat the designated agent as a natural person licensee *for all purposes*, including criminal liability.

Id. at 58 (emphasis added). We do not read the “for all purposes” language in *Beaudry* as broadly as does Flowers. The issue before the court in *Beaudry* was merely that of the agent’s vicarious liability. The opinion did not suggest that an agent has any authority either to represent the corporation in legal proceedings or to intervene in an individual capacity in license revocation proceedings to protect some separate personal interest. In other words, that the agent for a corporation must satisfy all of the same criteria as a natural person in order to obtain a liquor license, and is thereafter legally responsible for compliance with all the requirements for maintaining that license, does not mean that the agent has a personal interest in whether or not the corporation is granted a license in the first place or whether that license is subsequently revoked.

¶9 Alternatively, Flowers contends that the agent of a corporation with a liquor license at least has a personal interest in the revocation of that license when the revocation is based upon the alleged criminal history of the agent or the agent’s keeping a “disorderly house.” See WIS. STAT. § 125.04(5)(a)1. and MGO 38.10(1)(a)(2). In such situations, Flowers argues, the agent’s reputation and continued employment may both be at stake. We conclude, however, that the only direct injury resulting from the revocation of a corporation’s liquor license is to the corporation itself. Any harm to the agent’s reputation or continued employment would be secondary, and the result of factors beyond the status of the corporation’s liquor license.

¶10 Flowers next claims that, since WIS. STAT. § 125.12(2)(d) gives residents of a municipality the right to seek circuit court review of any municipal government decision to grant or revoke a liquor license, it follows that such residents must also have standing to seek declaratory judgment on any ordinance or statute that might affect the licensing proceedings. Again, we disagree. WISCONSIN STAT. § 806.04(2) provides that:

any person ... whose rights, status or other legal relations are affected by a ... municipal ordinance ... may have determined any question ... of validity arising under the ... ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.

As we have just discussed above, the only person or entity with any “rights, status or other legal relations” directly affected by the grant or revocation of a liquor license to a corporation is the corporation itself.

¶11 Finally, Flowers claims that, as property owner, he has an individual interest in the revocation proceeding because MGO § 38.10(1)(e) provides that no other liquor license shall be granted to either the licensee “or for such premises” for a period of twelve months after a revocation. He claims that he will suffer lost or reduced rent payments and remodeling costs if he cannot use his premises for a tavern. While that may be true, we again conclude that such consequences are secondary in nature. Whether or not the corporation is unable to pay Flowers the agreed-upon rent for the premises due to the loss of its liquor license is a separate question from whether the liquor license was properly revoked.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

